

July 31, 2004⁸

IN RE: DOCKET NO. 2002-367-C & 2002-408-C

**COPY OF RESPONSIVE TESTIMONY OF BELLSOUTH WITNESSES,
JOHN A. RUSCILLI AND WILLIAM E. TAYLOR, PH.D. HAS BEEN
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POSTED 7/30/03

BELLSOUTH

BellSouth Telecommunications, Inc.
Legal Department
 1600 Williams Street
 Suite 5200
 Columbia, SC 29201

patrick.turner@bellsouth.com

Patrick W. Turner
 General Counsel-South Carolina

803 401 2900
 Fax 803 254 1731

July 30, 2003

The Honorable Gary E. Walsh
 Executive Director
 Public Service Commission of South Carolina
 Post Office Drawer 11649
 Columbia, South Carolina 29211



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 SC PUBLIC SERVICE
 COMMISSION

Re: Generic Proceeding to Address Abuse of Market Position
 Docket No. 2002-367-C
 Proceeding to Define the Term "Inflation-Based Index"
 Docket No. 2002-408-C

Dear Mr. Walsh:

Enclosed for filing are the original and twenty-five copies of the responsive testimony of BellSouth Telecommunications, Inc.'s ("BellSouth") witnesses John A. Ruscilli and William E. Taylor, Ph.D. in the above-referenced matters.

By copy of this letter, I am serving the responsive testimony on parties of record as reflected on the attached Certificate of Service.

Sincerely,

Patrick W. Turner
 Patrick W. Turner

PWT/jbm
 Enclosures
 cc: Parties of Record

PC Docs #499860

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1 BELLSOUTH TELECOMMUNICATIONS, INC.

2 RESPONSIVE TESTIMONY OF JOHN A. RUSCILLI

3 BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

4 DOCKET NOS. 2002-367-C & 2002-408-C

5 JULY 30, 2003



6
7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR
9 BUSINESS ADDRESS.

10
11 A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director
12 – Policy Implementation and Regulatory Compliance for the nine-state
13 BellSouth region. My business address is 675 West Peachtree Street, Atlanta,
14 Georgia 30375.

15
16 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

17
18 A. Yes. I filed testimony in this proceeding on July 23, 2003.

19
20 Q. WHAT IS THE PURPOSE OF YOUR RESPONSIVE TESTIMONY?

21
22 A. The purpose of my responsive testimony is to address, from a policy
23 perspective, certain aspects of the testimony filed on July 23, 2003, by Allen
24 G. Buckalew on behalf of the South Carolina Consumer Advocate and by Greg
25 Darnell on behalf of MCI WorldCom, Inc.

1
2 **I. ABUSE OF MARKET POSITION**
3

4 Q. ON PAGE 6, LINES 5-7 OF HIS JULY 23, 2003 TESTIMONY, MR.
5 BUCKALEW STATES THAT "A FIRM WITH MARKET POWER WILL
6 UTILIZE LIMIT/EXCLUSIONARY PRICE STRATEGY IF IT BELIEVES
7 IT WILL SUCCEED IN DRIVING COMPETITORS FROM THE MARKET
8 OR DETERRING THEIR ENTRY ALL TOGETHER." WHAT ARE THE
9 PROSPECTS OF A LOCAL EXCHANGE TELECOMMUNICATIONS
10 COMPANY SUCCESSFULLY ENGAGING IN THIS TYPE OF PRICING
11 STRATEGY IN SOUTH CAROLINA?
12

13 A. None. First, to be clear, this "utilize limit/exclusionary" pricing strategy is
14 only associated with price reductions, not price increases, which was the basis
15 of the Consumer Advocate's issue in its original complaint. Further, as Mr.
16 Buckalew and most of the other witnesses that have filed testimony in this
17 docket have noted, such a strategy can succeed only if the company
18 implementing that strategy can drive existing competitors from the market and
19 prevent potential new competitors from entering the market.
20

21 Q. IS THAT LIKELY IN THE LOCAL EXCHANGE MARKET IN SOUTH
22 CAROLINA?
23

24 A. No. As explained in testimony that has been filed by several witnesses in this
25 proceeding, including the testimony of Dr. Taylor, implementation of the

1 federal Telecommunications Act of 1996 by the Federal Communications
2 Commission ("FCC") and by the Public Service Commission of South
3 Carolina ("Commission") helps ensure that the local exchange market in South
4 Carolina remains irreversibly open to competition.

5
6 Q. HAS THIS COMMISSION PREVIOUSLY MADE ANY FINDINGS
7 REGARDING THE LEVEL OF COMPETITION IN THE LOCAL
8 EXCHANGE MARKET IN SOUTH CAROLINA?

9
10 A. Yes. In its Order dated February 14, 2002 (more than 17 months ago)
11 approving BellSouth's application for Section 271 authority to provide
12 interLATA services in South Carolina, the Commission found that
13 "competition in the local services market is strong in South Carolina,"¹ and it
14 found that "competition in South Carolina is widespread."² The Commission
15 explained that this "evaluation is based on the full evidence of strong, robust
16 competition in the South Carolina local exchange market, rather than on any
17 specific anecdotes."³

18
19 Q. MR. DARNELL (PAGE 6, LINES 1-7) SUGGESTS THAT LOCAL
20 COMPETITION IS DEVELOPING MORE SLOWLY IN SOUTH
21 CAROLINA THAN IN OTHER BELL SOUTH STATES. CAN YOU
22

23 ¹ Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act
24 of 1996, *In Re: Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA
Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Order No. 2002-77 in Docket
No. 2001-209-C at p. 13 (February 14, 2002)(emphasis added).

25 ² *Id.* at p. 15 (emphasis added).

³ *Id.* at p. 17 (emphasis added).

1 ADDRESS THE EMERGENCE OF LOCAL COMPETITION IN SOUTH
2 CAROLINA?

3
4 A. Yes. First, my direct testimony describes in detail the numerous local service
5 choices available to South Carolina residence and business customers. Pages
6 13-15 of my July 23, 2003 testimony outlines "Other Services" offerings and
7 their associated prices from several competitive local exchange companies
8 (CLECs). In addition, pages 31-46 describe the residential and business
9 packaged service offerings of several CLECs as well as competitive choices
10 available through other than traditional wireline technologies. My testimony is
11 supported by nineteen (19) exhibits.

12
13 Further, CLECs are making great strides in garnering local service market
14 share in South Carolina. I have attached Exhibit JAR-1 to my responsive
15 testimony to demonstrate the increase in residence, business and total CLEC
16 access lines and market share as described below. When BellSouth filed its
17 Section 271 application with the FCC for South Carolina on June 20, 2002, the
18 estimated CLEC market share in South Carolina, based on March 2002 data,
19 was 10.7%⁴. Based on June 2003 data, using Method Two, CLECs now have
20 16.9% market share, representing a 58% increase in fifteen months (growing
21 almost 100,000 lines from 173,995 to 273,231 lines). When viewed
22 separately, business market share increased from 22.7% to 32.0% between
23

24 ⁴ Affidavit of Elizabeth Stockdale in FCC 02-150 dated June 20, 2002. Although Ms.
25 Stockdale's affidavit contained two methodologies for calculating CLEC market share (Methods One
and Two) 10.7% is based on Method Two, a more conservative estimate of market share than Method
One.

1 March 2002 and June 2003 (41% increase) and residence market share
2 increased from 4.6% to 8.6% (87% increase) over the same time period.

3
4 The market share increases are significant; however, they are also conservative
5 because they do not include all forms of local service competition, such as
6 wireless competition. This increase in the market share of BellSouth's
7 competitors as a percentage of all customers that BellSouth serves is all the
8 more remarkable given that these competitors haven't tried to take on the
9 entire market, but rather are targeting only selected portions of the local
10 market, where they can make the most money. For instance, while other local
11 carriers are providing service in more rural areas, MCI's "Neighborhood" plan
12 has not, as I understand it, been available to subscribers located in Zones 2 and
13 3 in South Carolina. Hopefully, MCI will expand its service offerings to
14 customers located in Zones 2 and 3; however, the numbers cited above are
15 inclusive of all markets. If we were able to calculate our competitors' market
16 share looking only at the markets where they are actually trying to sell service,
17 the competitors' market share would no doubt be significantly larger than I am
18 reporting.

19
20 Q. ON PAGE 6, LINES 12-13 OF HIS JULY 23, 2003 TESTIMONY, MR.
21 BUCKALEW STATES THAT CERTAIN FIRMS "CAN ALSO ENGAGE IN
22 MARKET ABUSE BY PRICING GOODS AND SERVICES ABOVE
23 REASONABLE PRICE LEVELS." WOULD YOU AGREE THAT PRICING
24 GOODS AND SERVICES ABOVE REASONABLE PRICE LEVELS IS
25 "MARKET ABUSE?"

1

2 A. No. First, as explained by Dr. Taylor, pricing above competitive levels may be
3 an “exercise” of market power, but not an “abuse.” This is because pricing
4 above competitive levels does not impair competition. As Verizon witness
5 Dennis B. Tribble explains (at page 7, line 17 through page 8, line 3 of his July
6 23, 2003 testimony):

7 Price increases are not evidence of “exclusionary” or “abusive” market
8 conduct. As antitrust scholars Phillip Areeda and Herbert Hovenkamp
9 explain, a firm with a dominant position does not impair the
10 opportunities of its rivals or behave in an exclusionary manner when it
11 increases prices. “On the contrary, high prices encourage the entry and
12 expansion of rivals.”

13

14 Second, the phrase “reasonable price levels” is not an objective standard at all.
15 Reasonableness can mean almost anything depending on the views of the
16 person applying the standard.

17

18 Q. REGARDLESS OF WHETHER IT WOULD BE CORRECT TO CONSIDER
19 PRICING ABOVE REASONABLE LEVELS AN “ABUSE,” WHAT ARE
20 THE PROSPECTS OF A LOCAL EXCHANGE TELECOMMUNICATIONS
21 COMPANY ENGAGING IN THIS TYPE OF PRICING STRATEGY IN
22 SOUTH CAROLINA?

23

24 A. If we define reasonable price level to mean competitive price level,
25 none. Such a strategy can succeed only if the company implementing

1 that strategy can drive existing competitors from the market and
2 prevent potential new competitors from entering the market. This is
3 because pricing above the competitive level will simply cause the firm
4 implementing the price increase to lose customers to competitors and
5 will also provide incentive for additional competitors to enter the
6 market.

7
8 Furthermore, requirements that ILECs must make their retail services available
9 to competitors through resale (retail price minus a 14.8% avoided cost
10 discount) and through the provision of unbundled network elements (“UNEs”)
11 at total element long run incremental cost (“TELRIC”) prices ensures that price
12 increases will not drive competitors from the market or prevent potential new
13 competitors from entering the market. If an ILEC raises its retail price for a
14 service, the CLEC can continue to resell this service with the same margin,
15 thus there is no harm to the ILEC’s resale competitors. Similarly, a retail price
16 increase by the ILEC only improves the competitive position of the CLEC that
17 serves its customers using UNEs, because the price of those UNEs remains the
18 same.

19
20 Q. ON PAGE 6, LINES 12-13 OF HIS JULY 23, 2003 TESTIMONY, MR.
21 BUCKALEW STATES THAT CERTAIN FIRMS “CAN UTILIZE PRICE
22 DISCRIMINATION IF [THEY HAVE] SIGNIFICANT MARKET POWER.”
23 SHOULD THE COMMISSION ADDRESS PRICE DISCRIMINATION IN
24 THIS DOCKET?

25

1 A. No. As I explained in my testimony of July 23, 2003, S.C. Code Section 58-9-
2 576(B)(5) provides that a LEC's rates for "other services" must satisfy two
3 conditions: (1) they must not unreasonably discriminate between similarly
4 situated customers; and (2) they "are subject to a complaint process for abuse
5 of market position" The purpose of this docket is only to define the
6 second condition (rates that constitute an abuse of market position) – not the
7 separate and distinct first condition (unreasonable discrimination between
8 similarly situated customers). The Commission, therefore, should continue to
9 consider allegations of unreasonable discrimination on a case-by-case basis, as
10 it did in resolving the Complaint that certain CLECs filed against BellSouth
11 regarding certain promotions. *See* Order Ruling on Complaint, *In Re:*
12 *Southeastern Competitive Carriers Ass'n, NewSouth Communications Corp.,*
13 *and TriVergent Communications v. BellSouth Telecom. Inc.*, Order No. 2001-
14 1036 in Docket No. 2000-378-C (October 29, 2001).

15

16 Q. ON PAGES 7-8 OF HIS JULY 23, 2003 TESTIMONY, MR. BUCKALEW
17 DISCUSSED BUNDLING AND TYING. SHOULD THE COMMISSION
18 BE CONCERNED WITH BUNDLING AND TYING IN THIS DOCKET?

19

20 A. No. As I explained in my testimony of July 23, 2003, the FCC has found that
21 bundling is consumer-friendly and pro-competitive. The FCC also has found
22 that existing safeguards are sufficient with regard to bundling. Moreover,
23 residential and business customers can choose from a wide variety of bundled
24 offerings that are offered by a wide variety of competitors. Finally, BellSouth
25 witness Dr. Taylor (at pages 35-43 of his July 23, 2003 testimony), Sprint

1 witness Brian K. Staihr (at pages 14-15 of his July 23, 2003 testimony), and
2 Verizon witness Dennis B. Trimble (at pages 10-11 of his July 23, 2003
3 testimony) all provide additional explanations of why the Commission should
4 not be concerned about bundling or “product tie-ins” in this proceeding.

5
6 Q. MCI WORLDCOM WITNESS MR. DARNELL (AT PAGE 6, LINES 7-10)
7 SUGGESTS THAT THE COMMISSION: NOT ATTEMPT TO FURTHER
8 DEFINE THE TERM “ABUSE OF MARKET POSITION;” CONTINUE TO
9 EVALUATE COMPLAINTS ALLEGING “ABUSE OF MARKET
10 POSITION” ON A CASE-BY CASE BASIS; AND EXPEDITIOUSLY ACT
11 ON COMPLAINTS BROUGHT AGAINST ILECS. PLEASE COMMENT
12 ON THESE SUGGESTIONS.

13
14 A. These suggestions ignore the history that led to these proceedings and the
15 reasons the Commission convened these proceedings in the first place. They
16 also are internally inconsistent.

17
18 Q. HOW DO THESE SUGGESTIONS IGNORE THE HISTORY THAT LED
19 TO THIS DOCKET BEING CONVENED AND THE REASONS THE
20 COMMISSION CONVENED THIS DOCKET IN THE FIRST PLACE?

21
22 A. The Commission originally considered the term “abuse of market position” in
23 Docket No. 1999-469-C. The Commission decided that instead of establishing
24 a definition for this and other terms that appear in Section 58-9-576 in that
25 docket, it would establish such definitions “through the cases that come before

us.”⁵ When the Consumer Advocate challenged BellSouth's tariff increasing the prices of certain optional business and residential services, however, the Commission reconsidered this decision and ruled that

before we can continue to process complaints such as the Consumer Advocate's, we are going to have to establish a definition for “abuse of market position” and criteria for determining whether various behaviors by a Company constitute “abuse of market position.”

Accordingly, we hereby establish a generic proceeding under Docket No. 1999-469-C, BellSouth's Alternative Regulation Docket, in order to make this determination.

See Order No. 2002-679 in Docket No. 2002-234-C at 4 (emphasis added).

Q. HOW ARE MR. DARNELL'S SUGGESTIONS INTERNALLY INCONSISTENT?

A. As I explained in my testimony of July 23, 2003, this proceeding arose as a result of a complaint the Consumer Advocate filed nearly a year ago. Following Mr. Darnell's suggestions would mean that rather than being used productively to create a definition and criteria to help the Commission rule on that Complaint, the months between the filing of that Complaint and the

⁵ See Order Ruling on Guidelines, *In Re: Proceeding to Review BellSouth Telecommunications, Inc.'s Guidelines for Alternate Form of Regulation*, Order No. 2000-676 in Docket No. 1999-469-C at p. 11, ¶8 (September 26, 2000) (“Guidelines Order”).

1 Commission's decision in this docket would have been used for no real
 2 purpose. Far from facilitating the “expeditious” resolution of the Consumer
 3 Advocate's Complaint, therefore, Mr. Darnell's suggestion would create
 4 unnecessary delay in the resolution of that Complaint.

5
 6 Q. WHAT DOES BELL SOUTH PROPOSE THAT THE COMMISSION DO IN
 7 THE “ABUSE OF MARKET POSITION” PORTION OF THIS
 8 PROCEEDING?

9
 10 A. For all of the reasons explained in my testimony of July 23, 2003, BellSouth
 11 proposes that the Commission define “abuse of market position” (as that term
 12 is used in Section 58-9-576(B)(5)) as “any anticompetitive pricing conduct that
 13 harms the competitive process.” BellSouth further proposes that the
 14 Commission adopt, as a “safe harbor”, a price floor of total service long run
 15 incremental cost. In other words, the Commission should determine that price
 16 adjustments for “Other Services” are not an abuse of market position if the
 17 resulting prices are at or above total service long run incremental cost.
 18 Although a price floor of long run incremental cost will, in all cases, protect
 19 against the possibility of predatory pricing, a price floor of total service long
 20 run incremental cost (which is generally equal to or higher than long run
 21 incremental cost) will in all cases protect against the possibility of cross
 22 subsidy. Finally, if an ILEC prices a service in the “Other Services” category
 23 below total service long run incremental cost, BellSouth proposes that the
 24 Commission examine the pricing in the manner suggested by Staff witness Dr.
 25 Spearman – on a case-by-case basis. In doing so, the Commission should

1 apply traditional antitrust principles to determine whether any such pricing
2 adjustment is, in fact, an abuse of market position. It is important to
3 understand that, unlike MCI WorldCom's proposal to handle every issue
4 including the definition of "abuse of market position" on a case-by-case basis,
5 BellSouth is proposing a very limited application of review on a case-by-case
6 basis. Such review would be limited to only those instances where BellSouth
7 priced its services below total service long run incremental cost.

8
9 Q. IS THE LEVEL OF PRICING FLEXIBILITY FOR "OTHER SERVICES"
10 PROVIDED BY SECTION 58-9-576(5) UNUSUAL IN PRICE
11 REGULATION PLANS IN BELL SOUTH'S REGION?

12
13 A. No. It is not unusual in price regulation plans for services other than basic
14 (generally termed non-basic services) to be given significant pricing flexibility.
15 For example, in BellSouth's price regulation plan in Alabama, non-basic
16 services in the aggregate can increase up to 10% annually (versus the 5%
17 voluntary increase for Other Services in South Carolina). In Kentucky, the
18 Transition Regulatory Plan approved by the Kentucky Public Service
19 Commission in August 2000 allows BellSouth, with the exception of certain
20 residential services, full discretion to propose prices based on market
21 conditions. Georgia Statutes Section 46-5-166(e), similar to the South
22 Carolina statute, allows a local exchange company electing price regulation to
23 set rates for all services, other than residence and single-line business, on a
24 basis that does not unreasonably discriminate between similarly situated
25

1 customers. The Alabama and Georgia plans have contained this level of
2 pricing flexibility since 1995.

3

4 It is clear from the state plans discussed above that by adopting BellSouth's
5 proposed "safe harbor", in conjunction with the 5% cap already applied to
6 increases for "Other Services", this Commission would be acting consistent
7 with several other State Commissions in BellSouth's region.

8

9

II. INFLATION-BASED INDEX

10

11 Q. ON PAGE 17, LINE 3-7 OF HIS JULY 23, 2003 TESTIMONY, MR.
12 BUCKALEW RECOMMENDS THAT THE COMMISSION ADOPT THE
13 FOLLOWING FORMULA AS THE INFLATION-BASED INDEX:
14 "INFLATION FACTOR – PRODUCTIVITY FACTOR." WHAT DOES
15 THE SOUTH CAROLINA STATUTE THAT PROVIDES FOR AN
16 "INFLATION-BASED INDEX" SAY ABOUT PRODUCTIVITY
17 FACTORS?

18

19 A. Nothing. Section 58-9-576(B)(4) makes no reference whatsoever to a
20 productivity factor.

21

22 Q. IS THE ABSENCE OF ANY REFERENCE TO A PRODUCTIVITY
23 FACTOR IN THE STATUE SIGNIFICANT?

24

25

1 A. Yes, it is. While I am not a lawyer, and this may well be something that
2 should be left for legal briefs, I can state without equivocation that this
3 Commission in the past has not defined an inflation-based index the way that
4 Mr. Buckalew is proposing in this proceeding.

5
6 Q. PLEASE EXPLAIN WHY YOU HAVE REACHED THIS CONCLUSION.

7
8 A. In 1994 -- two years before Section 58-9-576(B)(4) was enacted and two years
9 before the federal Telecommunications Act of 1996 was enacted -- the General
10 Assembly passed a statute providing that, if the Commission found that a local
11 exchange company was subject to competition for its services, the Commission
12 could "implement regulatory alternatives including, but not limited to,
13 equitable sharing of earnings between a local exchange telephone utility and its
14 customers" *See* S.C. Code Ann. §58-9-575. Rather than establishing the
15 specifics of any such regulatory alternative, this statute set forth broad criteria
16 with which any such plan would have to comply. Acting under the discretion
17 granted to it under this prior statute, the Commission issued an order dated
18 January 30, 1996, adopting an inflation-based index applicable to certain
19 BellSouth services, and it provided that "the inflation-based index applied for
20 possible rate increases in these areas shall be offset by a 2.1% productivity
21 factor."⁶ Clearly this Commission distinguished between an "inflation-based
22 index" and a productivity factor. Mr. Buckalew's testimony attempts to define
23 an "inflation-based" index as something that already accounts, in its

24 ⁶ *See* Order Granting Alternative Regulation and Approving Plan as Modified, *In Re:*
25 *Application of BellSouth for Alternative Regulation (Consumer Price Protection Plan)*, Order No. 96-
19 in Docket No. 95-720-C at p. 28 (January 30, 1996).

1 construction, for productivity. If Mr. Buckalew's proposal had been used by
 2 this Commission in its 1996 order, it would have resulted in the absurd
 3 conclusion that a productivity factor should have been deducted twice. Clearly
 4 this Commission has not defined "inflation-based index" in this manner in the
 5 past, and it should not do so now.

6
 7 Q. COULD THE LEGISLATURE IN SOUTH CAROLINA HAVE PROVIDED
 8 FOR THE CALCULATION OF AN INFLATION-BASED INDEX IN THE
 9 MANNER THAT MR. BUCKALEW PROPOSES?

10
 11 A. Certainly, and in other states in the BellSouth region the legislatures have done
 12 exactly that when they intended to have a productivity offset such as the one
 13 suggested by Mr. Buckalew.

14
 15 Florida statutes, for instance, provide that

16 the local exchange telecommunications company may thereafter
 17 on 30 days' notice adjust its basic service revenues once in any
 18 12-month period in an amount not to exceed the change in
 19 inflation less 1 percent. (Fl. Stat. §364.051(3)(emphasis added).

20
 21 This is similar in concept to the "GDP – 2-3%" formula Mr. Buckalew is
 22 recommending in this proceeding (at page 17, lines 3-7 of his July 23, 2003
 23 testimony). The difference, of course, is that the Florida statute clearly spells
 24 out an "inflation less 1 percent" formula in plain and unmistakable language.
 25

1 The South Carolina statute, in contrast, clearly calls for the use of an inflation-
2 based index without any mention of a productivity factor.

3

4 Similarly, Georgia statutes provide that

5 Rates for basic local exchange services may be adjusted by the
6 electing company subject to an inflation based cap. Inflation
7 shall be measured by the change in the GDP-PI. The electing
8 company is authorized to adjust the cap on an annual basis. The
9 cap requires that the annual percentage rate increase for basic
10 local exchange services shall not exceed the greater of one-half
11 of the percentage change in the GDP-PI for the preceding year
12 when the percentage change in the GDP-PI exceeds 3 percent or
13 the GDP-PI minus 2 percentage points. (Ga. St. §46-5-166(c)).

14

15 Again, this is similar to the formula Mr. Buckalew is recommending is this
16 proceeding, with the difference being that, like the Florida statute, the Georgia
17 statute also clearly spells out this formula in plain and unmistakable language.
18 The South Carolina statute, in contrast, clearly calls for the use of an inflation-
19 based index without mention of a productivity factor.

20

21 Similarly, Tennessee statutes provide that

22 [a] price regulation plan shall maintain affordable basic and
23 non-basic rates by permitting a maximum annual adjustment
24 that is capped at the lesser of one half ($\frac{1}{2}$) the percentage
25 change in inflation for the United States using the gross

1 domestic product-price index (GDP-PI) from the preceding year
 2 as the measure of inflation, or the GDP-PI from the preceding
 3 year minus two (2) percentage points. (Tenn. Code Ann. §65-5-
 4 209(e))

5
 6 Like the Florida and Georgia statutes, this Tennessee statute clearly spells out a
 7 formula similar to the one suggested by Mr. Buckalew in plain and
 8 unmistakable language, while the South Carolina statute clearly calls for the
 9 use of an inflation-based index without any productivity factor.

10
 11 On the other hand, even in those states where the applicable statute does not
 12 specifically mention the use of a productivity offset, such as Alabama,
 13 Kentucky, Louisiana, Mississippi and North Carolina, those statutes, unlike
 14 South Carolina's statute, provide the State Commissions with broad
 15 jurisdiction to set the pricing rules for BellSouth's services under price
 16 regulation or alternative regulation plans. The statutes in these states allow the
 17 State Commissions to establish not only the pricing, but other parameters of a
 18 regulatory plan as well.

19
 20 Q. ARE THERE OTHER REASONS THE COMMISSION SHOULD REJECT
 21 MR. BUCKALEW'S SUGGESTION OF A PRODUCTIVITY FACTOR?

22
 23 A. Yes. The suggestion of a productivity factor is inappropriate from an
 24 economic perspective for all the reasons explained by BellSouth witness, Dr.
 25 Taylor in his responsive testimony. Of course, this is not only BellSouth's

1 opinion, but also the opinion of the Commission's Staff and of Verizon South
2 that clearly articulate the conclusion that such an adjustment is inappropriate.

3
4 Further, in BellSouth's region, the trend is clearly toward removal of
5 productivity factors or automatic reductions and not toward institution of new
6 ones. For example, in establishing the Transition Regulation Plan for
7 BellSouth in August 2000, the Kentucky Commission eliminated the
8 productivity factor that had previously applied to non-competitive (basic)
9 services under a price regulation plan initially instituted in July 1995. In
10 revising BellSouth's Price Regulation Evaluation Plan in October 2001, the
11 Mississippi Commission eliminated the requirement that BellSouth reduce its
12 basic service revenues annually by 1% or \$3.75 million, whichever was
13 greater, as instituted initially in January 1996. In its last legislative session, the
14 Florida Legislature enacted legislation amending Florida Statutes (Section
15 364.051) to establish a means by which BellSouth's basic services would no
16 longer be subject to the formula GDP-PI minus 1%, but would be treated the
17 same as non-basic services, where price changes are not subject to an inflation-
18 based index. In addition, the FCC granted local exchange companies relief in
19 the application of the 6.5% "X" factor for interstate services, which was
20 established in 1997. With implementation of the FCC's Pricing Flexibility
21 Order and CALLS Order, the 6.5% "X" factor now only applies to certain
22 transport and special access services. The majority of BellSouth's interstate
23 revenues and services under price caps are no longer subject to the "X" factor.
24 While the Commission must retain the inflation-based index as specified in the
25 statute, Mr. Buckalew's recommended productivity factor is not found in the

1 statute and its adoption by this Commission would be moving backward and
2 thus, contrary to the industry trend.

3

4 Q. DOES THAT CONCLUDE YOUR RESPONSIVE TESTIMONY?

5

6 A. Yes.

7

8

9 499911

10

11

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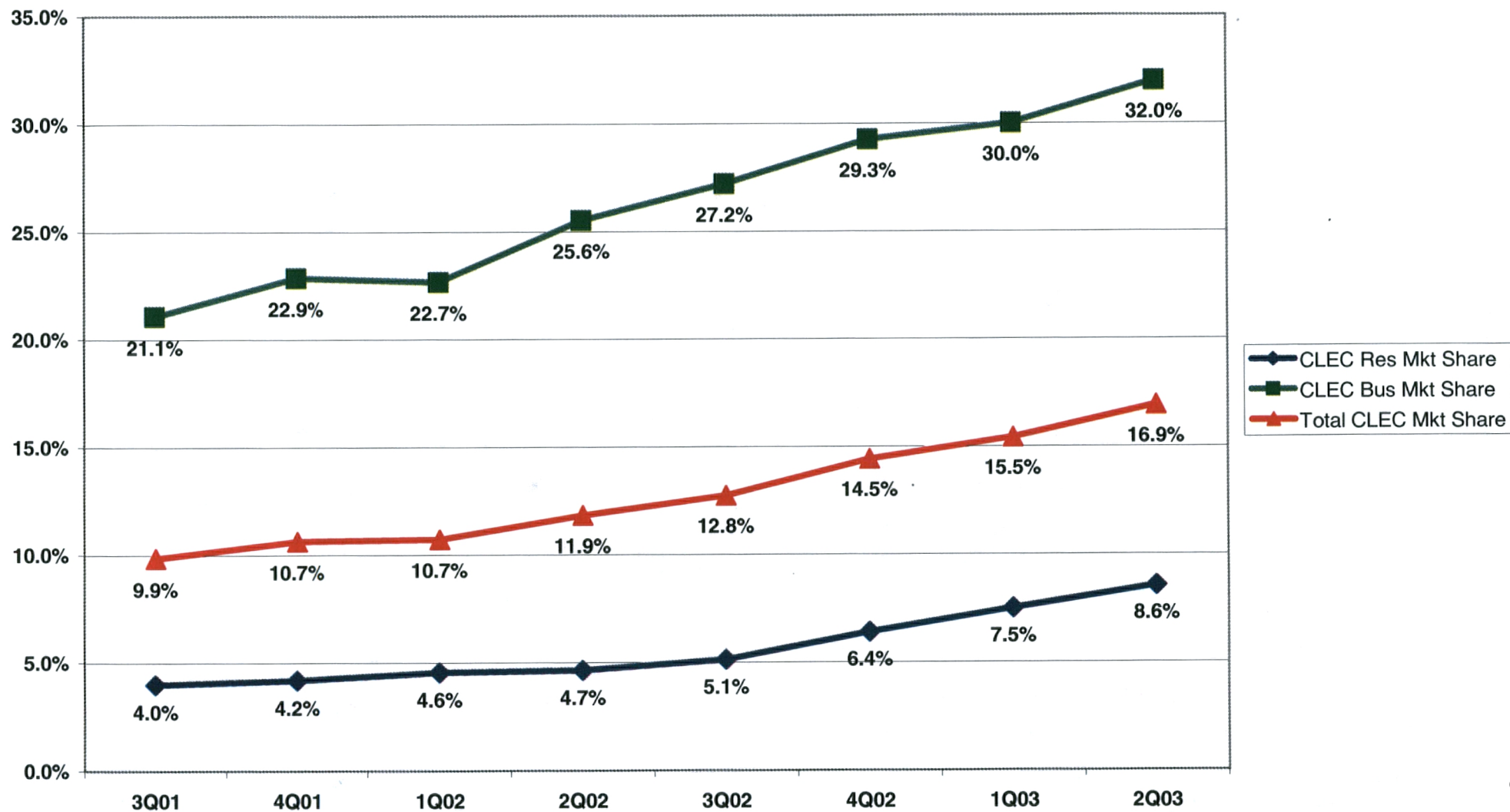
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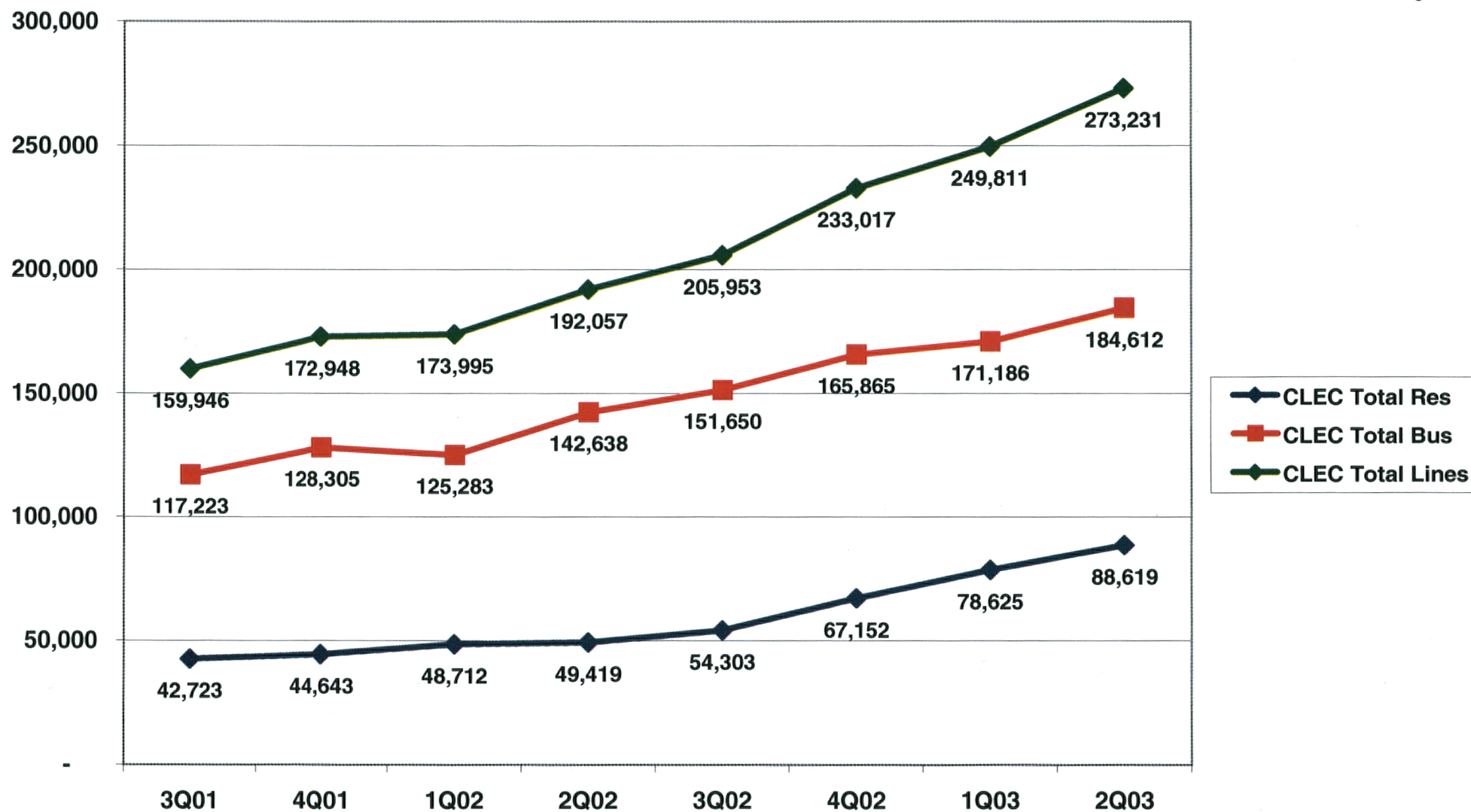
25

BellSouth Telecommunications, Inc.
 SCPSC Docket Nos. 2002-367-C & 2002-408-C
 July 30, 2003
 Exhibit JAR-1

BST - South Carolina CLEC Market Share



Estimated South Carolina CLEC Access Lines



STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Jeanette B. Mattison, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Responsive Testimony of John A. Ruscilli in Docket No. 2002-367-C and 2002-408-C to be served upon the following this July 30, 2003:

F. David Butler, Esquire
General Counsel
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(U.S. Mail and Electronic Mail)

Elliott F. Elam, Jr., Esquire
S. C. Department of Consumer Affairs
3600 Forest Drive, 3rd Floor
Post Office Box 5757
Columbia, South Carolina 29250-5757
(Consumer Advocate)
(U.S. Mail and Electronic Mail)

Steven W. Hamm, Esquire
Richardson, Plowden, Carpenter &
Robinson
1600 Marion Street
Post Office Box 7788
Columbia, South Carolina 29202
(Verizon South Inc.)
(U.S. Mail and Electronic Mail)

John J. Pringle, Jr., Esquire
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202
(CompSouth)
(U.S. Mail and Electronic Mail)

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SC FELLOWSHIP
CORRECTIONAL

Darra W. Cothran, Esquire
Woodward, Cothran & Herndon
1200 Main Street, 6th Floor
Post Office Box 12399
Columbia, South Carolina 29211
(MCI WorldCom Communications, Inc. and
MCImetro Access Transmission Services, LLC)
(U.S. Mail and Electronic Mail)

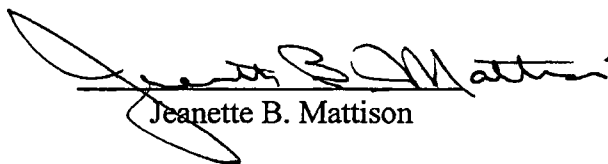
Mr. Stan Bugner
State Director/Reg. & Government Affairs
1301 Gervais Street, Suite 825
Columbia, South Carolina 29201
(Verizon Select Services, Inc.)
(U.S. Mail and Electronic Mail)

Kennard B. Woods
MCI WorldCom, Inc.
Law and Public Policy
6 Concourse Parkway, Suite 600
Atlanta, GA 30328
(MCI WorldCom Communications, Inc. and
MCImetro Access Transmission Services, LLC)
(U.S. Mail and Electronic Mail)

Kay Berry
Coordinator Governmental Affairs
ALLTEL South Carolina, Inc.
2000 Center Point Drive, Suite 2400
Columbia, South Carolina 29210
(U.S. Mail and Electronic Mail)

Scott Elliott, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, South Carolina 29205
(United Telephone Company of the Carolinas/Sprint)
(U.S. Mail and Electronic Mail)

H. Edward Phillips, III, Esquire
Legal Department Mailstop: NCWKFR0313
14111 Capital Boulevard
Wake Forest, North Carolina 27587-5900
(United Telephone Company of the Carolinas/Sprint)
(U.S. Mail and Electronic Mail)



Jeanette B. Mattison

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